



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

### **Agency Information Collection Activities: Notice of Intent to Renew Collection**

#### **3038-0021, Regulations Governing Bankruptcies of Commodity Brokers**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC or Commission) is announcing an opportunity for public comment on the proposed extension of the collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection, and to allow 60 days for public comment. This notice solicits comments on the collection of information provided for by the Commission's regulations governing bankruptcies of commodity brokers.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by OMB Control No. 3038-0021, by any of the following methods:

- CFTC Comments Portal: <https://comments.cftc.gov>. Select the "Submit Comments" link for this matter and follow the instructions on the Public Comment Form.
- Mail: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- Hand Delivery/Courier: Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged. All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418-5926; email: [jpartridge@cftc.gov](mailto:jpartridge@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed extension of the collection of information listed below.

**Title:** Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for an extension of a currently approved information collection.<sup>1</sup>

**Abstract:** This collection of information involves the reporting, recordkeeping, and third party disclosure requirements set forth in the CFTC’s bankruptcy regulations for commodity broker liquidations, 17 CFR part 190.<sup>2</sup> These regulations apply to commodity broker liquidations under Chapter 7, Subchapter IV of the Bankruptcy Code.<sup>3</sup>

The reporting requirements include, for example, notices to the Commission regarding the filing of petitions for bankruptcy and notices to the Commission regarding the intention to transfer open commodity contracts in a commodity broker liquidation. The recordkeeping requirements include, for example, the statements of customer accounts that a trustee appointed for the purposes of a commodity broker liquidation (Trustee) must generate and adjust as set forth in the regulations. The third party disclosure requirements include, for example, the disclosure statement that a commodity broker must provide to its customers containing information regarding the manner in which customer property is treated under part 190 of the Commission’s regulations in the event of a bankruptcy and, in the event of a commodity broker liquidation, certain notices that a Trustee must provide to customers and to the persons to whom commodity

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<sup>1</sup> There are two information collections now associated with OMB Control No. 3038-0021. The first includes the reporting, recordkeeping, and third party disclosure requirements applicable to a single respondent in a commodity broker liquidation (*e.g.*, a single commodity broker or a single trustee) within the relevant time period provided for in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b) and 190.06(b). The second information collection includes third party disclosure requirements that are applicable on a regular basis to multiple respondents (*i.e.*, multiple futures commission merchants) provided for in Commission regulations 190.06(d) and 190.10(c).

<sup>2</sup> These include the requirements contained in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b), and 190.06(b).

<sup>3</sup> 11 U.S.C. 761 *et seq.*

contracts and specifically identifiable customer property have been or will be transferred. The information collection requirements are necessary, and will be used, to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings both directly and by facilitating the participation of the CFTC in such proceedings.

With respect to the collections of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures

established in § 145.9 of the Commission's regulations.<sup>4</sup> The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection requirements will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

**Burden Statement:** The Commission notes that commodity broker liquidations occur at unpredictable and irregular intervals when particular commodity brokers become insolvent. While a commodity broker liquidation has not occurred in the past three years, the Commission took the conservative approach of maintaining the assumption contained in the previous renewal of this information collection that, on average, a commodity broker liquidation would occur every three years. The Commission generally has retained the burden hour estimates set forth in the previous information collection as there have been no interim experiences nor are there currently apparent circumstances that would warrant altering those estimates.<sup>5</sup> The Commission further notes, however, that the information collection burden will vary in particular commodity broker liquidations depending on the size of the commodity broker, the extent to which accounts

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<sup>4</sup> 17 CFR 145.9.

<sup>5</sup> The Commission has retained the burden hour estimates for each of the applicable regulations except that the Commission no longer assigns burden hours to the discretionary notice that a Trustee may provide to customers in an involuntary commodity broker liquidation pursuant to Commission regulation 190.02(b)(3). There have been no involuntary commodity broker liquidations and none are anticipated. Accordingly, continuing to assign burden hours to this voluntary requirement would inappropriately inflate the burden hours of this information collection.

are able to be quickly transferred, and other factors specific to the circumstances of the liquidation.

The respondent burden for this information collection is estimated to be as follows:<sup>6</sup>

Reporting:<sup>7</sup>

*Estimated Number of Respondents:* 1

*Estimated Annual Number of Responses per Respondent:* 1.33

*Estimated Total Annual Number of Responses:* 1.33

*Estimated Annual Number of Burden Hours per Respondent:* 1.33

*Estimated Total Annual Burden Hours:* 1.33

*Type of Respondents:* Commodity brokers, Trustees, and self-regulatory organizations.

*Frequency of Collection:* On occasion

Recordkeeping:<sup>8</sup>

*Estimated Number of Respondents:* 1

*Estimated Annual Number of Responses per Respondent:* 26,666.67

*Estimated Total Annual Number of Responses:* 26,666.67

*Estimated Annual Number of Burden Hours per Respondent:* 333.33

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<sup>6</sup> Because a commodity broker liquidation is estimated to occur only once every three years, the previous information collection expressed the burden of the reporting, recordkeeping, and third party disclosure requirements in terms of the burden applicable to “.33” respondents in many cases. For clarity, this notice expresses such burdens in terms of those that would be imposed on *one* respondent during the three year period. While the applicable burden is expressed in a different way, as noted above, the burden hours generally remain unchanged.

<sup>7</sup> The reporting requirements are contained in Commission regulations 190.02(a)(1), 190.02(a)(2), and 190.06(b).

<sup>8</sup> The recordkeeping requirements are contained in Commission regulations 190.03(a)(1), 190.03(a)(2), and 190.04(b).

*Estimated Total Annual Burden Hours:* 333.33

*Type of Respondents:* Trustees

*Frequency of Collection:* Daily and on occasion

Third Party Disclosures Applicable to a Single Respondent:<sup>9</sup>

*Estimated Number of Respondents:* 1

*Estimated Annual Number of Responses per Respondent:* 6,671.32

*Estimated Total Annual Number of Responses:* 6,671.32

*Estimated Annual Number of Burden Hours per Respondent:* 1,034.63

*Estimated Total Annual Burden Hours:* 1,034.63

*Type of Respondents:* Trustees

*Frequency of Collection:* On occasion

Third Party Disclosures Applicable to a Multiple Respondents:<sup>10</sup>

*Estimated Number of Respondents:* 125

*Estimated Annual Number of Responses per Respondent:* 2,000

*Estimated Total Annual Number of Responses:* 250,000

*Estimated Annual Number of Burden Hours per Respondent:* 100

*Estimated Total Annual Burden Hours:* 12,500

*Type of Respondents:* Futures commission merchants

*Frequency of Collection:* On occasion

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<sup>9</sup> These third party disclosure requirements are contained in Commission regulations 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), and 190.02(c).

<sup>10</sup> See fn. 1. The Commission is setting forth a new information collection under OMB Control No. 3038-0021 to separately account for third party disclosure requirements provided for in Commission regulations 190.06(d) and 190.06(c) that are applicable on a regular basis to multiple respondents (*i.e.*, multiple futures commission merchants).

There are no new capital or start-up or operations costs associated with this information collection, nor are there any maintenance costs associated with this information collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 20, 2018.

Christopher Kirkpatrick,

*Secretary of the Commission.*

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